In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 460

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NINA DYE WORKS CO., INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Acting Solicitor General, on behalf of the National Labor Relations Board, files this petition for a writ of certiorari to review the decision of the Court of Appeals for the Third Circuit entered on July 24, 1952, setting aside an order issued by the Board against Nina Dye Works Co., Inc., hereinafter called the Company, and prays that the Court entertain the petition and dispose of it in accordance with this Court's ultimate decision in *National Labor Relations Board* v. *Thomas W. Dant, et al., Co-Partners doing business as Dant & Russell, Ltd.*, No. 97, this Term.

OPINIONS BELOW

The opinion of the Court of Appeals (R.A. 118a-123a)[1] is reported at 198 F. 2d 362. The findings of fact, conclusions of law, and order of the Board (B.A. 216a-227a) are reported at 95 NLRB 824.

JURISDICTION

The decree of the Court of Appeals (R.A. 124a) was entered on July 24, 1952. The time for filing a petition for a writ of certiorari was extended by order of Mr. Justice Burton, on October 17, 1952, from October 22, 1952 to and including November 21, 1952 (R.A. 129). The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

An unfair labor practice charge was filed by a union at a time when this union had filed the financial and other data required by Section 9 (f) and (g) and its officers had submitted the non-Communist affidavits prescribed by Section 9 (h) of the National Labor Relations Act, as amended, but the Congress of Industrial Organizations, with which the charging union was affiliated, and its officers had not. However, the CIO and its officers complied with the foregoing provisions of the Act before the General Counsel issued a complaint upon the union's charge. The question presented

[1] The designations "R.A." and "B.A." refer, respectively, to the appendix to respondent's brief and the appendix to the Board's brief in the court below, which together comprise the record here.

is whether an unfair labor practice complaint may properly issue at a time when the charging union and its parent organization are in full compliance with Section 9 (f), (g) and (h), notwithstanding that there was not such full compliance when the charge was filed.

STATUTE INVOLVED

The statutory provisions principally involved are Sections 9(f), (g), and (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V. 151, *et seq.*). These provisions of the Act are set out in the Appendix, *infra*, pp. 7-10.

STATEMENT

On June 15, 1949, the Company discharged two employees, Ralph Ruby and Charles Miller. On July 11, 1949, and September 26, 1949, the Textile Workers Union of America, CIO, hereinafter called the Union, filed a charge and amended charge alleging that the Company had violated Section 8 (a) (3) and (1) of the Act by discharging the two employees and had further violated Section 8 (a) (1) by various acts of interference, restraint and coercion committed during June 1949 (B.A. 3a-8a). According to the Board's administrative records, the Union at that time was in full compliance with the requirements prescribed by Section 9 (f), (g) and (h). The CIO, with which the Union was affiliated, did not come into full compliance with these requirements until December 22, 1949.

On or about June 29, 1950, the General Counsel,

on behalf of the Board, issued a complaint on the charges filed by the Union (B.A. 12a-16a). The customary proceedings were then held before a trial examiner and before the Board (B.A. 27a-215a). On July 31, 1951, the Board issued its decision and order (B.A. 216a-227a).

The Board, on the authority of its prior decision in *Dant & Russell, Ltd.*, 92 NLRB 307, and 95 NLRB 252, and other cases, denied the Company's motion to dismiss the complaint because the CIO was not in full compliance with Section 9 (f), (g) and (h) at the time the above-mentioned charges were filed. The Board held that the Act requires only that the labor organization involved shall be in compliance with the filing provisions before a complaint issues, that the CIO had fully complied with the relevant provisions of the Act when the complaint issued, and that the complaint had, therefore, properly issued (B.A. 217a). The Board further found that the Company had violated Section 8 (a) (3) and (1) of the Act by discriminatorily discharging the two employees and had further violated Section 8 (a) (1) by engaging in various kinds of anti-union conduct (B.A. 217a-221a). The Board's order directed the Company to take appropriate remedial action (B.A. 221a-224a).

Thereafter, the Board petitioned the court below for enforcement of its order (R.A. 109a). The court, without discussing the merits of the unfair

labor practice finding save in one minor respect,[2] set aside the Board's order on the ground that compliance with the filing requirements prescribed by Section 9 (f), (g) and (h) is a condition precedent to the filing of charges. Citing, *inter alia*, *National Labor Relations Board* v. *Dant & Russell, Ltd.*, 195 F. 2d 299 (C. A. 9), certiorari granted, October 13, 1952, No. 97, this Term, the court held that since the CIO was not in full compliance with these requirements when the charge and amended charge were filed, "the Board was without jurisdiction to issue its complaint" (R.A. 123a).

REASONS FOR GRANTING THE WRIT

The question presented here is identical with the question presented in the *Dant & Russell* case, No. 97, this Term, in which this Court granted the petition for a writ of certiorari on October 13, 1952. Although the question presented in *Dant & Russell* involves compliance principally with Section 9 (h), determination of that question will also dispose of the question here insofar as it relates to compliance with Section 9 (f) and (g). The same disposition should therefore be made of this case as is made of the *Dant & Russell* case.

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[2] After the CIO came into compliance, the Union filed an additional amended charge (B.A. 9a-11a) on the basis of which the complaint further alleged, and the Board found, that the Company had interrogated employees concerning their interest in the Union, thereby violating Section 8 (a) (1). The court below rejected this finding, declaring that the incident was of no legal consequence (R.A. 123a).

CONCLUSION

For the reasons stated, we respectfully suggest that this Court retain the present petition on its docket pending decision in No. 97, and that this petition be thereafter disposed of in accordance with the holding in that case.

ROBERT L. STERN,
Acting Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

NOVEMBER, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

SEC. 9. * * *

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year,

including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no com-

plaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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